ORIGINAL

FILED
DEC 12 2000
CLERK

No. 00-769

IN THE
SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioner,

v.

KANGKIRI CHHUN,

Respondent.

MOTION FOR LEAVE TO PROCEED
IN FORMA PAUPERIS

The Respondent Kangkiri Chhun, pursuant to Supreme Court Rule 39 and 18 U.S.C. § 3006A(d)(7), asks leave to file his Response by Respondent to Petition for Writ of *Certiorari* to the United States Supreme Court without prepayment of costs, and to proceed *in forma pauperis*.

On June 9, 1999, the Federal Public Defender for the District of Nevada was appointed by the United States District Court for the District of Nevada to represent

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Kangkiri Chhun in the underlying civil case and on appeal to the Ninth Circuit Court of Appeals. This appointment was made pursuant to 18 U.S.C. § 3006A(a)(2)(B). Leave to proceed *in forma pauperis* has not been sought in any other court.

At the time of the appointment, Mr. Chhun had no assets and $57 in a commissary account. Mr. Chhun was detained by the Immigration and Naturalization Service throughout the proceedings in the district court. Since his release on or about August 10, 2000, Mr. Chhun has resided with his parents in Long Beach, California. He continues to be indigent and unable to finance the costs of this opposition to petition for writ of *certiorari*.

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WHEREFORE, the respondent, by and through the undersigned, respectfully prays for leave to proceed in the Supreme Court of the United States *in forma pauperis*.

DATED this 12th day of December, 2000.

Respectfully submitted,

R. L. V FOR

Franny A. Forsman
Federal Public Defender

R. L. V

Rene L. Valladares
Assistant Federal Public Defender
Counsel of Record

R. L. V FOR

Arthur L. Allen
Assistant Federal Public Defender

Federal Public Defender's Office
District of Nevada
330 South Third Street, Suite 700
Las Vegas, Nevada 89101
(702) 388-6577

Attorneys for Respondent Kangkiri Chhun

CERTIFICATE OF SERVICE

No. 00-769

IN THE SUPREME COURT OF THE UNITED STATES

IMMIGRATION AND NATURALIZATION SERVICE,

Petitioners,

v.

KANGKIRI CHHUN,

Respondent.

I, Arthur L. Allen, a member of the Bar of this Court, hereby certify that on this 12th day of December, 2000, three copies of the Response by Respondent to Petition for Writ of *Certiorari* and three copies of Mr. Chhun's Motion for Leave to Proceed *In Forma Pauperis* in the above-entitled case were mailed, first-class postage prepaid, to Seth P. Waxman, Solicitor General of the United States of America, Department of Justice, 950 Pennsylvania Avenue NW, Washington, DC 20530-0001, counsel for Petitioner herein. I further certify that all parties required to be served have been served.

Arthur L. Allen
Assistant Federal Public Defender
330 South Third Street, Suite 700
Las Vegas, Nevada 89101
(702) 383-6577
Counsel for Respondent Kangkiri Chhun

ORIGINAL

Supreme Court, U.S.
FILED
DEC 12 2000

No. 00-769

In The Supreme Court of the United States

October Term, 2000

IMMIGRATION AND NATURALIZATION SERVICE, Petitioner,

v.

KANGKIRI CHHUN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A WRIT OF *CERTIORARI*

FRANNY A. FORSMAN
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for the District of Nevada

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SUPREME COURT, U.S.

QUESTION PRESENTED FOR REVIEW

Whether, under 8 U.S.C. § 1231(a)(6), the Attorney General has the statutory authority to indefinitely detain a long-time resident alien of the United States beyond the 90-day removal period even if the deportation order cannot be effectuated in the reasonably foreseeable future.

Whether, if the Attorney General has the statutory authority to detain a long-time resident alien of the United States without time limitation under 8 U.S.C. § 1231(a)(6), that provision violates Kangkiri Chhun's Fifth Amendment Due Process rights because his deportation cannot be effectuated in the reasonably foreseeable future and, even if his deportation was foreseeable, he is not a danger to the community or a flight risk.

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IN THE SUPREME COURT OF THE UNITED STATES

No. 00-769

IMMIGRATION AND NATURALIZATION SERVICE, Petitioner,
v.
KANGKIRI CHHUN, Respondent.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONSE BY RESPONDENT TO PETITION FOR A
WRIT OF *CERTIORARI*

OPINIONS BELOW

The petition for *certiorari* correctly cites to the unreported district court and Court of Appeals opinions below. App. A, B & C to Pet. for Cert. 1a-14a.

STATUTORY, REGULATORY AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

The petition for *certiorari* correctly cites the statutory and regulatory provisions involved in the case, 8 U.S.C. § 1231(a)(6), 8 C.F.R. §241.4, and § 1231(a)(3). The additional statutory provision governing Mr. Chhun's release is 8 U.S.C. § 1253(b) which provides:

> An alien who shall willfully fail to comply with regulations or requirements issued pursuant to section 1231(a)(3) of this title or knowingly give false information in response to an inquiry under such section shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

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The constitutional provision involved is the Fifth Amendment Due Process Clause which provides, in relevant part: "No person shall . . . be deprived of life, liberty or property, without due process of law[.]"

STATEMENT

The lower court opinions correctly set forth the facts of the case and the procedural background. Pet. for Cert. 1a-14a.

By writ of habeas corpus, Mr. Chhun challenged on statutory and federal constitutional grounds his ongoing detention by the INS because his deportation order cannot be effectuated in the reasonably foreseeable future, if ever. The District Court denied Mr. Chhun's petition. However, the Court of Appeals remanded Mr. Chhun's writ of habeas corpus to the District Court for reconsideration based upon the circuit's decision in *Ma v. Reno,* 208 F.3d 815 (9th Cir.), *pet. reh'g denied* (June 2, 2000), *cert. granted,* 121 S.Ct. 297, 69 USLW 3086 (U.S. Oct. 10, 2000) (No. 00-38). In light of the grant of *certiorari* in *Ma*, Mr. Chhun waives his right to file a Brief in Opposition. Mr. Chhun does not thereby waive any objections to the government's recitation of the facts which are either inaccurately stated in, or omitted from, the petition for *certiorari.*

ARGUMENT

The questions presented by this case are whether the Attorney General has the statutory authority to detain a long-time resident alien of the United States whose deportation order cannot be effectuated in the reasonably foreseeable future, if ever, and if so, whether that detention runs afoul of Mr. Chhun's substantive due process rights under the Fifth Amendment of the United States Constitution. These same issues are presented in *Ma v. Reno,* 208 F.3d 815, and *Zadvydas v.*

Underdown, 185 F.3d 279 (5th Cir. 1999), *cert. granted*, 121 S.Ct. 297, 69 USLW 324, 69 USLW 3257 (U.S. Oct. 10, 2000) (No. 99-7791), in which the Court granted *certiorari* review on October 10, 2000.

Accordingly, Mr. Chhun does not waive any objections to the government's recitation of the proper legal analysis in Mr. Chhun's case. He nevertheless agrees with the government that consideration of the government's petition in this case should be held pending the Court's decision in *Ma* and *Zadvydas*.

CONCLUSION

The petitioners' petition for *certiorari* should be held pending this Court's decision in *Reno v. Ma*, No. 00-38, and *Zadvydas v. Underdown*, No. 99-7791, and then disposed of as appropriate in light of the decisions in those cases.

Respectfully submitted,

R. L Vmms FOR

Franny A. Forsman
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R. L. Vmms

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Counsel of Record

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Arthur L. Allen
Assistant Federal Public Defender

Counsel for Respondent, Kangkiri Chhun

December 12, 2000